

OPINION
67-275

December 7, 1967 (OPINION)

Mr. Glenn Dill

Assistant State's Attorney

Ward County

RE: Taxation - Liens for Special Assessments - Cancellation

This is in response to your letter in which you ask for an opinion on the question whether or not special assessments are cancelled where the county obtains the property is a result of failure to pay general taxes. You also ask whether or not special assessments are cancelled when the property in question is conveyed to a holder of a tax certificate for which the county, in due course, issues its tax deed.

Based on the statutory provisions prior to 1961, the liens resulting from unpaid special assessments were lost when the property in question was sold for taxes by the county. An opinion by this office dated December 19, 1960, in effect, concluded that such sales eliminated the lien for special assessments unless the municipality took specific steps to protect its interests.

Presumably to modify this result, Chapter 351 of the 1961 Session Laws was enacted amending Sections 57-27-05, 57-28-05, 57-28-07, 57-28-08, 57-28-09 and 57-28-10 of the North Dakota Century Code, all relating to tax deed proceedings. While the language in such amendments clearly indicates that the property mentioned in the tax deed would be subject to special assessments, Section 57-28-21 was not amended and as of now still provides that where property is sold, the board of county commissioners shall by resolution cancel all taxes and special assessments remaining on record against such property.

This is where some of the difficulty arises. Section 57-28-21 is, in this respect, irreconcilable with the amendments contained in Chapter 351 of the 1961 Session Laws.

We are also aware that the courts frown upon repeal by implication. It is further noted that Chapter 351 does not provide that all laws inconsistent therewith are repealed. This, to a degree, adds to the dilemma. We are somewhat cognizant of the problems confronting the sale of property where same is greatly encumbered with tax liens and special assessments. We believe that the Legislature recognized this situation and as a result thereof enacted Chapter 436 of the 1967 Session Laws amending Section 57-28-17, authorizing reduction or cancellation of special assessments, to make the property more salable.

We must also note the provisions of Section 11-18-02 which provides that the register of deeds shall refuse to record a deed unless a certificate is entered thereon showing that delinquent taxes and special assessments have been paid.

The foregoing evinces an intent to preserve the lien for special assessments. Whether these indications are strong enough to overcome the rule of law that repeals by implication are frowned upon is still difficult and probably will not be finally settled unless a decision is obtained thereon from the North Dakota Supreme Court, or unless the Legislature makes the necessary changes.

The statutory provisions referred to will affect the status of the property involved and any opinion we might give would be advisory only as pertaining to private individuals. However, we feel obligated to advise county officials and issue our opinion when so requested by the State's Attorney.

In attempting to dispose of this problem, we are mindful that the margin of error cannot be eliminated with any reasonable assurance. We also believe that it would be wiser and more prudent to conclude that the liens for special assessments survive and constitute an encumbrance upon the property than to speculate that the same do not and later find that the title to the property is clouded. If we were to conclude that the liens for special assessments do not survive and if the county officials were to act accordingly, the purchaser may well find that he did not acquire what he thought he bargained for - which could result in unwanted and costly lawsuits.

We also believe that because of the possible action taken by the county prior to the 1961 amendments, and the subsequent action of the county since the amendments as pertaining to special assessments and the possibility of diverse results, depending on the factual situation and applicable law the ultimate tax deed issued by the county could reflect the specific situation involved. We cannot attempt to anticipate the various combinations that might result but we feel that a general disposition of the basic questions is about all that can be accomplished at this time.

On this basis it is our opinion that where the tax deed conforms substantially to the statutory provisions in effect at the time the deed was issued, the deed is entitled to be filed even though the special assessments have not been paid. In this respect those provisions of Section 11-18-02 that are in irreconcilable conflict with the statutory form of tax deed are deemed repealed by implication.

On the basis of the foregoing, which we are compelled to take into consideration, we deem it advisable to issue our opinion to the effect that liens for unpaid special assessments are not cancelled upon the issuance of a tax deed by the county. In so concluding we are aware that certain property embraced with sizeable liens for taxes and special assessments will not be attractive to potential purchasers. There is, however, a remedy to such situations which is found in Section 57-28-17, as amended by Chapter 436 of the 1967 Session Laws, and we strongly recommend that in such instances the governing bodies make use of said provisions.

The review of the pertinent statutory provisions clearly illustrates that there is dire need for corrective legislation in this area, particularly over those provisions which are in irreconcilable

conflict with other existing provisions.

HELGI JOHANNESON

Attorney General